

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JIM SINCLAIR, et al.,

Case No. 15-cv-12697

Plaintiffs,

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

v.

ALFREDO JIMENEZ, et al.,

UNITED STATES MAGISTRATE JUDGE
DAVID R. GRAND

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT DET. FRANK
LENZ'S MOTION TO STAY DISCOVERY AND CASE EVALUATION PURSUANT TO
FED. R. CIV. P. 7 AND 26 [38]**

Plaintiffs filed their Complaint in this case on July 31, 2015. Dkt. No. 1. On September 21, 2015, the Court ordered that the proceedings in this case against Det. Frank Lenz would be stayed for six months. Dkt. No. 10. On November 10, 2015, the Court granted a six-month stay to the remaining defendants. Dkt. No. 19. No action was taken until October 2015, when Plaintiff's counsel withdrew following his client's entrance into a plea agreement in the related criminal proceedings. Dkt. Nos. 20, 24. The Court granted Plaintiff two months to secure new counsel and set a date for a scheduling conference so that the case could proceed. Dkt. No. 24.

The Court issued a scheduling order on January 10, 2017, setting the discovery cut-off for June 8, 2017. Dkt. No. 25. More than three months after the

scheduling order was entered, and over twenty months after the Complaint was filed, Defendant Lenz filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(c). Plaintiffs' response to this motion was due three weeks after the motion was filed on April 25, 2017. That date has passed and no response was received.

On May 17, 2017, Defendant Lenz filed a motion seeking to extend discovery and case evaluation dates, arguing the Court should decide his recently filed motion under Rule 12(b)(6)¹ before discovery concludes. Dkt. No. 38. It is unclear why Defendant's motion for judgment on the pleadings was not filed until more than half of the discovery period had already passed, especially because he had notice of Plaintiff's claims for more than a year.

This case is nearly two years old and has been subject to numerous delays and extensions. Thus, to ensure that the parties are able to comply with the remaining dates on the scheduling order, the Court will move up the hearing on Defendant's motion to Thursday, June 8, 2017 at 10:00am. Discovery will be extended one month, to conclude on July 8, 2017. All other dates will remain as scheduled.

¹ Had Defendant Lenz filed a motion to dismiss under Rule 12(b)(6), as he argues in the motion to stay, Dkt. No. 38, p. 8 (Pg. ID 273), such a motion would have been stricken as untimely because defendants may not file a Rule 12(b) motion after filing an answer. *See* Dkt. No. 29 (Defendant Lenz's answer, filed January 19, 2017).

IT IS SO ORDERED.

Dated: May 23, 2017

HON. GERSHWIN A. DRAIN
United States District Court Judge